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September 12, 2006 (Date of Signature)

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Patent
PD-201027A**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In Re Application of

Erin H. Sibley

Art Unit: 2617

Serial No. 09/844,932

Examiner: Ustaris, Joseph G.

Filed: April 26, 2001

For: PORTABLE DEVICE FOR USE WITH DIGITAL OVER-THE-AIR
COMMUNICATION SYSTEM FOR USE WITH TERRESTRIAL
BROADCASTING SYSTEM

BRIEF ON APPEAL

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
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Sir:

The following Appeal Brief is submitted in response to the Notice of Appeal filed
July 21, 2006.

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I. Real Party in Interest

The real party in interest in this matter is The DIRECTV Group, Inc of El Segundo, California which is 34 percent owned by Fox Entertainment Group, which is approximately 82 percent owned by The News Corporation, Limited.

II. Related Appeals and Interferences

There are no other known appeals or interferences which will directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

III. Status of the Claims

Claims 1-15 are pending in the application.

IV. Status of Amendments

There have been no amendments filed subsequent to the response to the Final Office Action of March 2, 2006 and subsequent Advisory Action.

V. Summary of Claimed Subject Matter

Claim 1 is directed to portable user device 18 described on page 7, lines 15-27 for receiving a digital video stream embedded in a vertical blanking interval of a broadcast television signal. The general system is illustrated in Figure 1. Claim 1 is best understood referring to Figure 5.

Claim 1 includes a television tuner 120 for receiving the over-the-air broadcast signal (page 13, lines 9-11). A vertical blanking interval frame grabber 126 receives the digital video stream. This is described on page 13, lines 11-14.

A digital compressor 128 decompresses the digital video stream into a decompressed video stream, as is described on page 13, lines 13-17. A display 130 is used to display the decompressed video stream.

Claim 2 recites a cradle 160 coupled to a first antenna 156. The cradle receives the portable user appliance 152. This aspect of the invention is shown in Figure 9 and described on page 15, lines 5-15.

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Claim 3 recites that the cradle 160 is disposed within an automotive vehicle 150. This is described on page 14, lines 26-27.

Claim 4 depends from Claim 2 and recites that second antenna 158 is coupled to the cradle 160. The first and second antenna 156, 158 are coupled to a control circuit 126 for determining a first signal strength of the first signal and a second signal strength of the second signal. The control circuit compares the first signal strength and the second signal strength, and couples the greater of the first signal strength and the second signal strength to the portable user appliance 152. This is described on page 15, lines 5-18.

Claim 5 recites that the tuner 120, the frame grabber 126 and the display 130 are coupled within a personal digital system 136, as illustrated in Figure 6. This is also described on page 14, lines 1-5.

Claim 6 recites that the tuner 120, the frame grabber 126 and the display 130 are coupled within a cellular phone 142, as illustrated in Figure 7 and described on page 14, lines 20-25.

Claim 7 is the second independent claim and is different from Claim 1 in that, instead of a vertical blanking interval, excess bandwidth is used. Claim 7 is illustrated in Figure 11 and described on page 16 in various places. Claim 7 recites a television tuner 196 receiving the over-the-air digital broadcast signal. An excess bandwidth frame grabber 198 receives the digital video stream. The television tuner and the frame grabber are described in lines 5-8 of page 16.

Claim 7 also recites a digital decompressor 200 for decompressing the digital video stream into a decompressed digital video stream. This is described on page 16, lines 6-11.

Claim 7 further recites a display 202 that displays the decompressed video stream. This is described on page 16, lines 8-11.

Claim 8 depends on Claim 7 and recites a cradle 160 coupled to the first antenna 156. The cradle receives the portable user appliance 152. This is described on page 15, lines 5-15.

Claim 9 recites that the cradle 160 is disposed within an automotive vehicle 150. This is described on page 14, lines 26-27.

Claim 10 depends from Claim 9 and recites a second antenna 158 coupled to the cradle 150. The first and second antenna 156, 158 are coupled to a control circuit 126 for determining a first signal strength of the first signal and a second signal strength of the second signal, comparing the first signal strength to the second signal strength, and coupling the greater of the

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first signal strength and the second signal strength to the portable user device 136. This is described on page 14, lines 1-5 and illustrated in Figure 6.

Claim 11 recites that the tuner 120, frame grabber 126 and display 130 are coupled within a personal digital system 136, as illustrated in Figure 6 and described on page 14, lines 1-5.

Claim 12 depends from Claim 7 and recites that the tuner 120, frame grabber 126 and display 130 are coupled within a cellular phone 142. This is described on page 14, lines 20-25 and illustrated in Figure 7.

Claim 13 is a third independent claim directed to a method for operating a portable user appliance 152. The description is best understood with respect to the device shown in Figure 5. Claim 13 recites receiving over-the-air analog broadcast signals with an antenna 124. This is described on page 13, lines 4-7.

Claim 13 also recites receiving a digital video stream within the vertical blanking interval. This is described on page 13, lines 13-16.

Claim 13 further recites displaying the decompressed video stream, which is described on page 13, lines 15-21.

Claim 14 depends upon Claim 13 and recites that the step of receiving over-the-air analog broadcast signals with an antenna comprises receiving over-the-air analog broadcast signals with an automobile antenna 156, 158. This is described on page 14, line 22 – page 15, line 4.

Claim 15 is a fourth independent claim that corresponds to Figure 11. Claim 15 recites receiving the over-the-air broadcast signals with an antenna 192. This is described on page 16, lines 4-6.

Claim 15 also recites receiving a digital video stream with excess bandwidth of digital broadcast signals, which is described on page 16, lines 19-21.

Claim 15 further recites decompressing the digital video stream into a decompressed digital video stream on page 16, lines 8-11 and displaying the decompressed digital video stream on page 16, lines 8-11.

VI. Grounds of Rejection to be Reviewed on Appeal

The following issues are presented in this appeal:

Whether Claims 1 and 13 are unpatentable under 35 U.S.C. § 112, second paragraph, as failing to comply with the enablement requirement.

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Whether Claims 7 and 15 are unpatentable under 35 U.S.C. § 102(e) over *Shintani et al.* (6,661,472).

Whether Claims 1 and 13 are unpatentable under 35 U.S.C. § 103(a) over *Kim* (6,556,248) in view of *Freeman et al.* (2002/0129374).

Whether Claims 2, 3 and 14 are unpatentable under 35 U.S.C. § 103(a) over *Kim* in view of *Freeman et al.*, and further in view of *Cho* (5,760,848).

Whether Claim 4 is unpatentable under 35 U.S.C. § 103(a) over *Kim* in view of *Freeman et al.*, in view of *Cho*, and further in view of *Rudolph* (5,949,498).

Whether Claim 5 is unpatentable under 35 U.S.C. § 103(a) over *Kim* in view of *Freeman et al.* as applied to Claims 1 and 13 above, and further in view of *Leermakers* (2003/0105845).

Whether Claim 6 is unpatentable under 35 U.S.C. § 103(a) over *Kim* in view of *Freeman et al.* as applied to Claims 1 and 13 above, and further in view of *Yang* (6,529,742).

Whether Claims 8 and 9 are unpatentable under 35 U.S.C. § 103(a) over *Shintani et al.* in view of *Cho*.

Whether Claim 10 is unpatentable under 35 U.S.C. § 103(a) over *Shintani et al.* in view of *Cho* as applied to Claims 8 and 9 above, and further in view of *Rudolph*.

Whether Claim 11 is unpatentable under 35 U.S.C. § 103(a) over *Shintani et al.* in view of *Cho* and further in view of *Rudolph* as applied to Claim 10 above, and further in view of *Leermakers*.

Whether Claim 12 is unpatentable under 35 U.S.C. § 103(a) over *Shintani et al.* in view of *Yang*.

VII. Argument

The Rejection of Claims 1 and 13 under Section 112, Second Paragraph

Claims 1 and 13

With regard to Claims 1 and 13, the Examiner states:

“... the specification discloses inserting a digital video stream within a vertical blanking interval in paragraph 0047 and Figs. 4 and 5. However, in the broadcast television art, the vertical blanking interval does not have sufficient bandwidth to carry a video stream. The specification merely discloses using MPEG4 (or other suitable video compression software) to compress the

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video stream to fit inside the relatively small bandwidth of the vertical blanking interval. It is not clear how this is done; the specification provides no additional details regarding what structure would actually be able to accomplish this. It is unclear how one with ordinary skill in the art would insert a digital video stream within the vertical blanking interval. As best understood from the specification, the Examiner will read 'digital video stream' as graphics or still video images."

Appellant respectfully submits that inserting data in the vertical blanking interval is clearly set forth in the present invention. In the background of the *Kim* reference, a system is described that inserts information into the vertical blanking interval. The background of the *Kim* reference also recognizes the problem that there is limited space. Appellant has recognized this limited space and set forth a way to accommodate a digital video stream into the vertical blanking interval. Figure 5 specifically recites frame grabber software 126. The frame grabber software is the opposite of the VBI bridge hardware 114. The VBI bridge hardware 114, as stated in paragraph 0047, provides vertical blanking interval software which is used to superimpose the compressed digital signal onto the vertical blanking interval of the broadcast television signal. Since it is known where the vertical blanking interval of the broadcast television signal is, the frame grabber software is used to remove the digital signal therefrom. The digital signal may be reformed using various filtering techniques since the over-the-air broadcast signal is analog and the superimposed signal is digital. Thus, filtering techniques may be used. Paragraph 0048 specifically describes the mobile device 122 that includes the frame grabber software. Of course, Figs. 6, 7 and 9 also illustrate the frame grabber and decompression software. The type of superimposition and the type of frame grabbing software depend on the technique used for providing the digital signal thereon. As mentioned above, various techniques for compressing the digital signal may be used such as MPEG4 or other suitable video compression schemes. Appellant believes it is clear that the digital signal is superimposed on the analog signal. Imposing a digital signal on an analog signal is well known in the power line carrier art. The *Kim* reference, both in its background and in its text, made clear that this technique was known in the broadcast arts, but what was not known in the broadcast arts was to compress the digital signals so that a digital video stream may be provided in the vertical blanking interval. This will be argued further below.

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Appellant believes it is clear that digital data may be provided within a vertical blanking interval. The Examiner should recognize that by changing the frequency of the digital signal, more information may be placed therein. The present application may be used with various types of video signals. Video signals for small portable devices may have a lower resolution or may be highly compressed. Therefore, a lot of information may not necessarily be transmitted. For every frame there is a vertical blanking interval. Therefore, a considerable amount of space is available to insert a digital video stream. A digital video stream is removed from the analog signal using the frame grabber and reassembled into the digital video stream. With the frequencies available, it is believed that enough bandwidth may be provided to include a digital video stream. In the sentence bridging pages 2 and 3, the Examiner states that the vertical blanking interval does not have sufficient bandwidth to carry a video stream. Appellant merely states this is speculation by the Examiner. As mentioned above, the amount of bandwidth available depends upon the frequencies used by the devices. It is contemplated that the use of digital compression and a high bandwidth will allow a digital video stream to be placed therein. Appellant respectfully requests the Examiner to reconsider this rejection.

On page 2 of the Advisory Action, the Examiner states:

Furthermore, respectfully it is noted that the examiner statements are not based on speculation. One of ordinary skill in that art does not know how a digital video stream fits inside the relatively small bandwidth of the vertical blanking interval, which is only present for a very small amount of time during broadcast.

In the overall broadcasting scheme, the vertical blanking interval is only a small portion of the analog signal. However, every frame at 30 frames/second has a vertical blanking interval. It should also be noted that it is a digital signal superimposed upon the analog signal. Thus, in analog space, even though the space within each frame is relatively small (in an analog sense), a relatively large number of digital bits may be superimposed thereon, particularly when there are 30 frames per second typically found in a broadcast signal. Further, as mentioned above, a full high-definition quality signal may not be provided by the system. Several examples of small, hand-held devices are set forth. In such cases, less than a full digital signal, with less information, may be generated. Thus, by looking at the Detailed Description, several examples are provided and, thus, the enablement requirement is believed to have been met. Appellant,

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therefore, respectfully requests the Board to reverse the Examiner's position with respect to Claims 1 and 13.

**The Rejection of Claims 7 and 15 under Section 102(e) over *Shintani et al.*
(6,661,472)**

Claim 7

Claim 7 recites a portable user appliance for receiving a digital video stream embedded in excess bandwidth of an over-the-air digital broadcast television signal. The television tuner receives the over-the-air digital broadcast signal and an excess bandwidth frame grabber receives the digital stream therein. A digital decompressor decompresses the digital video stream into a decompressed video stream and a display displays the decompressed video stream.

The *Shintani* reference specifically mentions various numbers of channels whether they are primary or virtual channels. However, the *Shintani* reference never mentions excess capacity. The Examiner refers to Col. 1, lines 18-29. Appellant agrees that virtual channels are described. However, Appellant can find no teaching or suggestion for the virtual channels being provided in the excess bandwidth of an over-the-air digital broadcast television signal.

Therefore, because each and every element is not found in the *Shintani* reference, Appellant respectfully requests the Board to reverse the Examiner's position with respect to Claim 7.

Claim 15

Claim 15 has similar limitations with respect to the excess bandwidth of a digital broadcast signal. Appellant therefore respectfully submits that claim 15 is allowable for the same reasons set forth above with respect to claim 7. Appellant, therefore, respectfully requests the Board to reverse the Examiner's position with respect to the rejection of Claim 15 as well.

**The Rejection of Claims 1 and 13 under 35 U.S.C. § 103(a) over *Kim*
(6,556,248) in view of *Freeman et al.* (2002/0129374)**

Claim 1

Claim 1 is directed to a portable user appliance that receives a digital video stream embedded in a vertical blanking interval of a broadcast signal. Claim 1 includes a television tuner, a vertical blanking interval frame grabber for receiving the digital video stream, a digital

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decompressor for decompressing the video stream into a decompressed video stream, and a display displaying the decompressed video stream. Although the *Kim* reference specifically recites using the vertical blanking interval, no vertical blanking interval frame grabber is taught or suggested. Also, the *Kim* reference does not teach or suggest decompression software. Appellant has reviewed the entire specification and can find no teaching for compressing or decompressing a digital signal.

The Examiner admits that the *Kim* reference does not disclose a digital decompressor for decompressing the digital video stream into a decompressed video stream. The Examiner cites the *Freeman* reference for this teaching. The Examiner points to Figs. 2 and 3, compressors 3 and decompressor/decoder 110, paragraphs 50 and 53-54. Admittedly, the *Freeman* reference describes compression. Appellant admits that compression of video signals exists as is evidenced by the disclosure of the MPEG4 compression scheme described.

What is not shown in the combination of references is using compression for digital signals in a vertical blanking interval. The Examiner is forming a hindsight reconstruction to try to form the invention. Nothing in the *Freeman* reference suggests providing content in a vertical blanking interval and nothing in the *Kim* reference teaches compression. This is evident in the *Kim* reference even though the *Kim* reference in the background of the invention recognizes the limited field to which information may be attached. Therefore, Appellant respectfully requests the Board to reverse the Examiner's position with respect to the rejection of Claim 1.

Claim 13

Claim 13 includes similar limitations to those set forth with respect to the apparatus of Claim 1. For the same reasons set forth above with respect to Claim 1, Appellant respectfully requests the Board to reverse the Examiner's position with respect to the rejection of Claim 13.

The Rejection of Claims 2, 3 and 14 under 35 U.S.C. § 103(a) over *Kim* in view of *Freeman et al.*, and further in view of *Cho* (5,760,848)

Claim 2

Claim 2 recites a cradle coupled to a first antenna and that the cradle receives the portable user appliance.

Although the *Cho* reference illustrates a video monitor that is portable and has a cradle, no teaching or suggestion is provided in the *Cho* reference for the elements missing from the *Kim*

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and *Freeman* references. Appellant respectfully requests the Board to reverse the Examiner's position with respect to the rejection of Claim 2.

Claim 3

Claim 3 recites that the cradle of Claim 2 is disposed within an automotive vehicle. The Examiner points to *Cho*, Col. 4, line 63 – Col 5, line 18 for the automotive vehicle. Appellant can find no teaching or suggestion for a cradle incorporated into an automotive vehicle. The automotive vehicle is described in the passages; however, in Col. 5, lines 10-15, the portable television receiver 20 is replaced by an apparatus body corresponding to one of the foregoing displays as is set forth. Therefore, no teaching or suggestion is provided for a cradle. In fact, it appears that a cradle is taught away from for an automotive application in the *Cho* reference. Appellant, therefore, respectfully requests the Board to reverse the Examiner's position with respect to the rejection of Claim 3.

Claim 14

Claim 14 recites utilizing an automobile antenna to receive the over-the-air broadcast signals. The Examiner states that *Cho* reference illustrates an automobile antenna. However, although the antenna of the device is within the automobile, no automobile antenna is illustrated. That is, the antenna illustrated in *Cho* is merely the device antenna and not an automobile antenna. Therefore, Appellant respectfully requests the Board to reverse the Examiner's position with respect to the rejection of Claim 14.

The Rejection of Claim 4 under 35 U.S.C. § 103(a) over *Kim* in view of *Freeman et al.*, in view of *Cho*, and further in view of *Rudolph* (5,949,498)

Although the *Rudolph* reference illustrates a diversity antenna system, no teaching or suggestion is provided in *Rudolph* for providing a digital decompressor that receives a signal from a vertical blanking interval of a broadcast television signal. Therefore, Appellant respectfully requests the Board to reverse the Examiner's position with respect to the rejection of Claim 4.

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The Rejection of Claim 5 under 35 U.S.C. § 103(a) over *Kim* in view of *Freeman et al.* as applied to Claims 1 and 13 above, and further in view of *Leermakers* (2003/0105845)

The *Leermakers* reference also does not teach or suggest the elements missing from the *Kim* and *Freeman* references. Therefore, Appellant respectfully requests the Board to reverse the Examiner's position with respect to the rejection of Claim 5.

The Rejection of Claim 6 under 35 U.S.C. § 103(a) over *Kim* in view of *Freeman et al.* as applied to Claims 1 and 13 above, and further in view of *Yang* (6,529,742)

Claim 6 depends from claim 1 and recites that the tuner and frame grabber are coupled within a cellular telephone. Appellant respectfully submits that the *Yang* reference also does not teach or suggest a digital decompressor for decompressing a digital video stream that arrived through a vertical blanking interval of a broadcast television signal. Therefore, Appellant respectfully requests the Board to reverse the Examiner's position with respect to the rejection of Claim 6.

The Rejection of Claims 8 and 9 under 35 U.S.C. § 103(a) over *Shintani et al.* in view of *Cho*

Claims 8 and 9 depend from Claim 7. Claims 8 and 9 are similar to Claims 2 and 3 above. The *Cho* reference also does not teach or suggest excess bandwidth. Appellant therefore respectfully requests the Board to reconsider the rejection of Claims 8 and 9.

The Rejection of Claim 10 under 35 U.S.C. § 103(a) over *Shintani et al.* in view of *Cho* as applied to Claims 8 and 9 above, and further in view of *Rudolph*

Claim 10 is similar to Claim 4. The *Rudolph* reference does not teach or suggest utilizing the excess bandwidth of a digital over-the-air broadcast television system. Therefore, Appellant respectfully requests the Board to reverse the Examiner's position with respect to the rejection of Claim 10.

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The Rejection of Claim 11 under 35 U.S.C. § 103(a) over *Shintani et al.* in view of *Cho* and further in view of *Rudolph* as applied to Claim 10 above, and further in view of *Leermakers*

The *Leermakers* reference also does not teach or suggest the use of excess bandwidth of a signal. Therefore, Appellant respectfully requests the Board to reverse the Examiner's position with respect to the rejection of Claim 11.

The Rejection of Claim 12 under 35 U.S.C. § 103(a) over *Shintani et al.* in view of *Yang*

Appellant respectfully submits that the *Yang* reference also does not teach using the excess bandwidth for transmitting a digital broadcast television signal. Therefore, Appellant respectfully requests the Board to reverse the Examiner's position with respect to the rejection of Claim 12

VIII. Claims Appendix

A copy of each of the claims involved in this appeal, namely Claims 1-15 is attached as a Claims Appendix.

IX. Evidence Appendix

None.

X. Related Proceedings Appendix

None.

XI. Conclusion

For the foregoing reasons, Appellant respectfully requests that the Board direct the Examiner in charge of this examination to withdraw the rejections.

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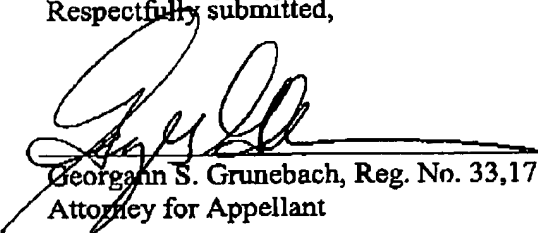
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Respectfully submitted,

Dated: September 12, 2006

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CLAIMS APPENDIX

1. A portable user appliance for receiving a digital video stream embedded in a vertical blanking interval of a broadcast television signal comprising:

- a television tuner for receiving the over-the-air broadcast signal;
- a vertical blanking interval frame grabber for receiving the digital video stream;
- a digital decompressor for decompressing said digital video stream into a decompressed video stream;
- a display displaying the decompressed video stream.

2. A portable user appliance as recited in claim 1 further comprising a cradle coupled to a first antenna, said cradle receiving said portable user appliance.

3. A portable user appliance as recited in claim 2 wherein said cradle is disposed within an automotive vehicle.

4. A portable user appliance as recited in claim 2 further comprising a second antenna coupled to said cradle, said first and second antenna coupled to a control circuit for determining a first signal strength of said first signal and a second signal strength of said second signal and comparing the first signal strength to the second signal strength and coupling the greater of the first signal strength and the second signal strength to said portable user device.

5. A portable user appliance as recited in claim 1 wherein said tuner, said frame grabber, and said display are coupled within a personal digital assistant.

6. A portable user appliance as recited in claim 1 wherein said tuner, said frame grabber, and said display are coupled within a cellular phone.

7. A portable user appliance for receiving a digital video stream embedded in excess bandwidth of an over-the-air digital broadcast television signal comprising:

- a television tuner receiving the over-the-air digital broadcast signal;
- an excess bandwidth frame grabber for receiving the digital video stream;

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a digital decompressor for decompressing said digital video stream into a decompressed video stream;

a display displaying the decompressed video stream.

8. A portable user appliance as recited in claim 7 further comprising a cradle coupled to a first antenna, said cradle receiving said portable user appliance.

9. A portable user appliance as recited in claim 8 wherein said cradle is disposed within an automotive vehicle.

10. A portable user appliance as recited in claim 9 further comprising a second antenna coupled to said cradle, said first and second antenna coupled to a control circuit for determining a first signal strength of said first signal and a second signal strength of said second signal and comparing the first signal strength to the second signal strength and coupling the greater of the first signal strength and the second signal strength to said portable user device.

11. A portable user appliance as recited in claim 10 wherein said tuner; said frame grabber; said display are coupled within a personal digital assistant.

12. A portable user appliance as recited in claim 7 wherein said tuner; said frame grabber; said display are coupled within a cellular phone.

13. A method of operating a portable user device comprising the steps of:
receiving over-the-air analog broadcast signals with an antenna;
receiving a digital video stream within the vertical blanking interval;
decompressing said digital video stream into a decompressed video stream; and
displaying the decompressed video stream.

14. A method as recited in claim 13 wherein the step of receiving over-the-air analog broadcast signals with an antenna comprises receiving over-the-air analog broadcast signals with an automobile antenna.

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15. A method of operating a portable user device comprising the steps of:
receiving the over-the-air broadcast digital broadcast signals with an antenna;
receiving a digital video stream within excess bandwidth of the digital broadcast
signals;
decompressing said digital video stream into a decompressed video stream; and
displaying the decompressed video stream.

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EVIDENCE APPENDIX

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Inventor: Erin Sibley, et al.

Serial No.: 09/844,932

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